NATIONAL HOUSING FEDERATION

Model Assured Shorthold Fixed-Term Tenancy
(April 2011 version)

Model Assured Shorthold Fixed-Term Tenancy Agreement: Notes

The aim of this document is to respond to the new investment framework, introduced from April 2011, by providing housing associations with a model form of assured shorthold fixed-term tenancy. To allow for a degree of flexibility, it incorporates a number of options. Users’ attention is particularly drawn to note 6, which explains the significance of the various insertions and deletions, and to note 7, which explains the formal signing requirements for tenancies with a fixed term of more than three years.

The Federation is pleased to acknowledge the assistance of Devonshires in the preparation of this model agreement.

1 Introduction

This model tenancy agreement was prepared by the National Housing Federation in April 2011. The model has been prepared to be used as a standard form, so that associations wishing to do so may copy it for supply to tenants, filling in the gaps and making deletions as necessary (see detailed notes below). Associations can also download an electronic version of the document and modify it as necessary. Alternatively, associations may wish to prepare their own agreements using the model as a basic form of words: the National Housing Federation is happy to waive its copyright for member associations using the model in this way.

The following notes deal first of all with the overall approach that has been taken in preparing this Agreement. They are followed by more detailed notes to indicate the various insertions and deletions associations should make.

2 Status of Agreement

The agreement establishes an assured shorthold fixed-term tenancy. It is designed to operate under the new investment framework introduced in April 2011, and it closely corresponds to the statutory regime of flexible secure tenancies in local authority housing. It should be used in self-contained dwellings only. The Federation supplies separate models for full assured periodic tenancies (i.e. so-called ‘lifetime’ tenancies) and assured shorthold periodic tenancies.

Users are warned that fixed-term tenancies differ in a number of ways from the periodic tenancies with which associations will be more familiar. This is the subject of a Federation briefing, a copy of which is attached to this model tenancy.
3 Regulatory Requirements

Formerly, regulation specified in great detail many of the terms that should appear in associations’ tenancy agreements, but more recently, especially since the TSA’s regulatory framework came into effect in April 2010, the regulator has resiled from such a prescriptive approach. Accordingly, this model no longer requires certain tenancy conditions formerly mandated by regulation: specifically, the right to improve the property, the right to compensation for improvements, and the right to repair. However, it is recognised that many associations will wish to retain these provisions, which reflect statutory rights enjoyed by secure tenants. The model therefore retains the relevant wording, but in such a way that it can be deleted if, after consultation with its tenants about the appropriate housing management offer, an association concludes that these rights are not a priority. See the list of deletions in note 6.

4 Service Charges

This model allows either fixed or variable service charges. Associations should take particular care to ensure that they delete or retain the appropriate parts of the model to produce the service charge regime they require (see note 6). Associations using variable service charges must also ensure that the agreement, or any attached schedule, enumerates all the services for which it is proposed to charge tenants.

Associations are warned that service charges are a complex area. The tenancy agreement should be very clear about whether the service charge regime is fixed or variable. Advice about the difference between fixed and variable regimes, and other aspects of service charges, is available from the Federation.

5 Support

The tenancy provides for cases where support is an essential part of the package being offered to the tenant. See note 6 (insertions and deletions). Note that the tenancy assumes that support, where provided, will be the subject of a separate agreement, which will also set out (if applicable) the tenant’s obligation to pay. A model support agreement is available from the Federation.

The ‘Support’ paragraph in the preamble should be retained only if the provision of support is fundamental to the tenancy, so that if for any reason support ceases to be provided the basis for the tenancy is removed. This paragraph should be deleted for general needs tenancies, even if floating support is being provided, because it would be possible to continue the tenancy even if the support came to an end.

6 Insertions and deletions

Associations using the model as a pro-forma should note the following points where insertions or deletions are required.

PREAMBLE ● Charitable associations registered under the Industrial and Provident Societies Act 1965 should delete the paragraph headed ‘Registered Charities’. Associations that are registered charities
should delete the paragraph headed ‘Charitable 1965 Act
Associations’. Non-charitable associations should delete both
paragraphs.

- The paragraph headed ‘Support’ should be used only if the
provision of support is fundamental to the tenancy, so that it
should not continue if the support ceases for any reason. In all
other cases (including, of course, general needs tenancies) this
paragraph should be deleted.
- In the paragraph headed ‘The Tenancy’, insert the number of
years of the term and the commencement date.

1(1) Delete either ‘weekly’ or ‘monthly’ in 1(1)(i) and 1(1)(ii). In 1(1)(i),
associations with fixed service charges should delete ‘exclusive’ and
quote a rent inclusive of service charges; associations with variable
service charges should delete ‘inclusive’ and exclude service charges
from the quoted rent.

1(2) Delete ‘weekly’ or ‘monthly’ and ‘week’ or ‘month’. Insert the
appropriate day: if the rent is debited weekly, usually ‘Mon’, if debited
monthly, ‘first’ etc.

1(3)(i) Delete either ‘below’ or ‘in the attached schedule’. Insert either a list
of services or the words ‘See schedule’. Associations must take care to
ensure that they list all services for which it is intended to charge: costs
of services not listed will be irrecoverable unless they have been added
under 1(3)(ii). It should also be noted that the inclusion of a service on
the list obliges an association to provide it, again unless it has been
removed under 1(3)(ii).

1(3)(iii)-(vi) In clause 1(3), associations with a fixed service charge should delete
sub-clauses (iii), (iv), (v) and (vi).

1(3)(v) Associations retaining 1(3)(v) should delete ‘(except as provided
below)’ if the division of service charges is equal. If it varies, the
formula should be inserted in the space. For instance, larger properties
may be expected to pay more than small, or some properties may be
excluded from paying for some of the services (e.g. ground floor flats
are sometimes not expected to contribute to lift maintenance).

1(4)(iii) There are two versions of this sub-clause. The first one should be used
if the service charge is fixed and the second if it is variable.

1(5) The association must give an address within England and Wales for the
receipt of formal notices. The address need not be the same as the
association’s registered office: it can if preferred be a local office or
the office of an agent. Note that if the tenant can prove delivery of a
notice to the address given, the association may not deny having
received it.

2(6) Insert an appropriate period of years.
3(2)  Delete ‘weekly’ or ‘monthly’.

3(15)  Insert the maximum number of persons allowed to live on the premises.

3(18)  Insert an appropriate number of days, e.g. 14, 21, 28.

4(9-11)  Please refer to note 3 for the background to the rights created by these subclauses. They are no longer a regulatory requirement and can be deleted if thought fit, although we anticipate that many associations will wish to retain some or all of them as a matter of good practice.

7  Formal signing requirements

When a tenancy is for a fixed term of more than three years, it must be created by deed. Although this is not necessary if the fixed term is for three years or less, it is likely that the great majority of fixed-term tenancies will be for more than three years and consequently our model requires formal execution. This involves certain legal processes and may also be the subject of specific requirements in an organisation’s governing instrument.

For Industrial and Provident Societies, the deed must be executed either by:

- the affixation of the common seal of the Industrial and Provident Society in accordance with its rules or as directed by the board (usually the rules or the board will authorise two persons to attest to the affixing of the seal to the deed by signing it); or

- the signature of two board members or of a board member and the secretary.

For Companies, the deed requires either the signatures of two directors, or the signatures of the secretary and a director, or the affixation of the seal in accordance with the Company’s articles of association (i.e. with signatories authorised by the Company’s articles or the directors attesting to the affixing of the seal).

The requirement to execute as a deed applies to the tenant as well as the landlord: this requires a witnessed signature.

8  Schedules and other documents

If service charges are set out in a separate schedule, it should be attached. The association may also wish to provide a summary of the grounds on which possession of an assured fixed-term tenancy may be sought. Note that of the normal assured grounds laid down in the Housing Act 1988, only grounds 2, 8, 10, 11, 12, 13, 14, 14A, 15 and 17 are available against a fixed-term tenant.

National Housing Federation
April 2011
NATIONAL HOUSING FEDERATION

MODEL ASSURED SHORTHOLD FIXED-TERM
TENANCY AGREEMENT
(April 2011 version)

THIS TENANCY AGREEMENT IS BETWEEN

Name and address of Association
The…………………………………………………………

…………………………………………………………

('the Association') of ………………………………….

…………………………………………………………

which is a housing association within the meaning of section 1 of the Housing Associations Act 1985 and a registered provider of social housing under section 111 of the Housing and Regeneration Act 2008.

Name of Tenant
and ………………………………………………………

…………………………………………………………

('the Tenant')

(In the case of joint tenants, the term 'Tenant' applies to each of them and the names of all joint tenants should be written above. Each Tenant individually has the full responsibilities and rights set out in this Agreement.)

Address
in respect of ……………………………………………

…………………………………………………………

…………………………………………………………

('the Premises')

Description of Premises
which comprises ………………………………………

…………………………………………………………

…………………………………………………………

*(a) Charitable associations registered under the Industrial and Provident Societies Act 1965

The dwelling that is the subject of this tenancy is held by (the landlord in trust for) a charity that is an exempt charity.

*(b) Registered Charities

The dwelling that is the subject of this tenancy is held by (the landlord in trust for) a charity and the grant of this Tenancy is a disposition falling within paragraph (a) of section 36(9) of the Charities Act 1993.

*Support

This Tenancy is granted to facilitate the provision of support for the Tenant or a member of his or her
household. The nature of this provision, and the Tenant’s obligations in relation to it, including, if applicable, any obligation to pay for it, are set out in a separate support agreement. Although support is provided in pursuance of that agreement, not under the terms of this Tenancy, the provision of support is fundamental to this Tenancy, and it shall therefore be regarded as a breach of this Tenancy if the Tenant withdraws from or breaches the support agreement. In the event of such a withdrawal or breach the Association may take steps to end the Tenancy.

The Tenancy

This Tenancy is granted for a term of ……… years commencing on ………………………………… . It is a fixed-term assured shorthold tenancy the terms of which are set out in this Agreement.

Re-entry by landlord

If –

a) the Rent and other charges payable shall remain unpaid, wholly or in part, for 14 days after becoming due, whether formally demanded or not,

b) the Tenant does not use, or ceases to use, the Premises as his or her only or principal home,

c) any of the Tenant’s other obligations in this Tenancy is not complied with, or

d) any of the grounds for possession listed in Schedule 2 of the Housing Act 1988 applies,

then the Association may re-enter the Premises and the Tenancy shall thereupon be terminated.

GENERAL TERMS

1. It is agreed as follows:-

Payments for the Premises

(1) (i) The weekly / monthly* rent for the Premises (exclusive / inclusive* of service charge) at the start of the tenancy shall be £………… .

(ii) The weekly / monthly* service charge at the start of the tenancy shall be £………… .

(2) The payment of rent and service charge is due in advance on the …………… day of each week / month*.
### Services

(3) (i) The Association shall provide the services and set out below / in the attached schedule* for which the Tenant shall pay a service charge.

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(ii) The Association may, after consulting the Tenants affected, increase, add to, remove, reduce, or vary the services provided.

(iii) The Association may charge for services on the basis either of reasonable costs incurred during the previous accounting period or of estimates for the current or next account period. The difference between any estimate and the actual cost may be carried forward.

(iv) The Association may establish a sinking fund to be applied to any unusually heavy cost expected to be borne by the service charge account in the foreseeable future.

(v) The cost of services shall be apportioned equally between all the properties concerned (except as provided below)*

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(vi) The Association shall provide an annual account of the costs incurred, the service charges due, and the amount held in the sinking fund if any.

### Changes in Rent and service charge

(4) (i) During the first year after the grant of this Tenancy the Association may vary the Rent once only by giving the Tenant one calendar month’s notice in writing. The notice shall specify the Rent proposed.
(ii) Thereafter the Association may vary the Rent by giving the Tenant not less than one calendar month’s notice in writing. The notice shall specify the Rent proposed. The Rent shall not be increased within 52 weeks of the previous increase.

(iii) *The service charge shall be varied at the same time as the rent and using the same procedure.*

*OR*

(iii) *The service charge may be reviewed not more than twice in any one year. The Association shall give the Tenant one calendar month's written notice of any change.*

**Service of notices**

(5) (i) Notice is hereby given in accordance with Section 48 of the Landlord and Tenant Act 1987 that the address of the Association for the receipt of legal notices, and any other communication arising from this Agreement, is

.................................................................

.................................................................

(ii) Any legal notice, or any other communication arising from this Agreement, shall be validly served on the Tenant if posted or delivered to the Premises. It is the responsibility of the Tenant, if absent for any length of time, to make arrangements for the collection or forwarding of mail.

**Altering the agreement**

(6) With the exception of any changes in Rent or service charges, this Agreement may be altered only with the consent in writing of both the Tenant and the Association.

**THE ASSOCIATION’S OBLIGATIONS**

2. **The Association agrees:**

**Possession**

(1) To give the Tenant possession of the Premises at the commencement of the Tenancy.
Tenant’s right to occupy  (2) Not to interrupt or interfere with the Tenant’s right peacefully to occupy the Premises except where –

(i) access is required, subject to reasonable notice, to inspect the condition of the Premises or to carry out repairs or other works to the Premises or adjoining property, or

(ii) the Association re-enters the Premises following a breach of the Tenant’s covenant to reside at the Premises, or

(iii) the Association is entitled to possession at the end of the Tenancy.

Repair of structure and exterior  (3) To keep in good repair the structure and exterior of the Premises including –

(i) drains, gutters and external pipes;

(ii) the roof;

(iii) outside walls, outside doors, windowsills, window catches, sash cords and window frames including necessary external painting and decorating;

(iv) internal walls, floors and ceilings, doors and door frames, door hinges and skirting boards but not including internal painting and decoration;

(v) chimneys, chimney stacks and flues but not including sweeping;

(vi) pathways, steps or other means of access

(vii) plasterwork

(viii) integral garages and stores

(ix) boundary walls and fences

Repair of installations  (4) To keep in good repair and proper working order any installation provided by the Association for space heating, water heating and sanitation and for the supply of water, gas and electricity, including-

(i) basins, sinks, baths, toilets, flushing systems
and water pipes;

(ii) electric wiring including sockets and
switches, gas pipes and water pipes;

(iii) water heaters, fireplaces, fitted fires and
central heating installations.

**Repair of common parts**

(5) To take reasonable care to keep the common
entrance, halls, stairways, lifts, passageways,
rubbish chutes and any other common parts,
including their electric lighting, in reasonable
repair and fit for use by the Tenant and other
occupiers of and visitors to the Premises.

**External decorations**

(6) To keep the exterior of the Premises and any
common parts in a good state of decoration and
normally to decorate these areas once every …

**Succession to partner**

(7) On the death of a sole Tenant who is not a
Successor, that the Tenancy will pass to the
Tenant’s spouse, civil partner, or other partner
under the provisions of the Housing Act 1988
provided that he or she occupies the Premises as
his or her only or principal home at the time of the
Tenant’s death.

A Successor is:

(a) a partner in whom the Tenancy was vested
under this clause; or

(b) a person that would have been entitled to
succeed had the previous Tenant died and to
whom the Tenancy was assigned under
clause 3(14); or

(c) a Tenant by survivorship when one of two or
more joint Tenants has died.

**Housing Management**

(8) To provide the Tenant with information on its
housing management policies.

**THE TENANT’S OBLIGATIONS**

3. **The Tenant agrees:-**

**Possession**

(1) To take possession of the Premises at the
Rent

(2) To pay the Rent and service charge weekly/monthly* in advance.

Outgoings

(3) To meet all outgoings applying to the Premises for which the Tenant is responsible, including water charges and electric and other costs whether prepaid or billed.

Use of Premises

(4) To use the Premises for residential purposes as the Tenant’s only or principal home and not to operate any business at the Premises that might cause a nuisance or annoyance to other persons in the neighbourhood.

Nuisance

(5) Neither to cause, nor to allow members of his or her household or visitors to cause, a nuisance or annoyance to other persons in the neighbourhood or to any tenant, agent, employee or contractor of the Association.

Racial and other harassment

(6) Neither to commit, nor to allow members of his or her household or invited visitors to commit, any harassment, or threat of harassment, on the grounds of race, colour, religion, sex, sexual orientation or disability that may interfere with the peace and comfort of, or cause offence to, other persons in the neighbourhood or to any tenant, employee, agent or contractor of the Association.

Noise

(7) Neither to play, nor to allow to be played, any radio, television, record or tape recording or musical instrument so loudly that it causes a nuisance or annoyance to other persons in the neighbourhood. The Tenant is reminded that noise is likely to be a particularly sensitive issue between the hours of 11.00pm and 7.30am.

Pets

(8) To keep under control any animals kept at the Premises and not to keep any animal that might damage the premises or cause a nuisance or annoyance to other persons in the neighbourhood.

Internal decoration

(9) To keep the interior of the Premises in good and clean condition and to decorate all internal parts of the Premises as often as is necessary to keep them in good decorative order.
| **Damage** | (10) To make good any damage to the Premises or the Association’s fixtures and fittings or to the common parts caused by the Tenant or any member of the Tenant’s household or any visitor to the Premises, fair wear and tear excepted, and to pay any costs reasonably incurred by the Association in carrying out such works in default. |
| **Reporting disrepair** | (11) To report to the Association promptly any disrepair or defect for which the Association is responsible in the Premises or the common parts. |
| **Access** | (12) To allow the Association’s employees or contractors acting on behalf of the Association access at reasonable times and subject to reasonable notice to inspect the condition of the Premises or to carry out repairs or other works to the Premises or adjoining property. (The Association will normally give at least 24 hours’ notice but more immediate access may be required in an emergency.) |
| **Roadways** | (13) Not to block local roadways and other vehicular access, and to keep them, and car parking spaces, clear of unroadworthy vehicles and other obstructions. |
| **Assignment** | (14) Not to assign the Tenancy except in furtherance of a court order or with the written consent of the Association when exercising the right to exchange set out in clause 4(7) below or assigning the Tenancy to someone that would have been qualified under clause 2(7) above to succeed to the Tenancy had the Tenant died. |
| **Overcrowding** | (15) Not to allow more than … persons to reside at the Premises. |
| **Lodgers** | (16) Before taking in any lodger to inform the Association of the name, age and sex of the intended lodger and of the accommodation he or she will occupy. |
| **Sub-letting** | (17) Not to grant a sub-tenancy of the Premises or any part of the Premises. |
| **Absence from Premises** | (18) To inform the Association, in writing and if possible in advance, if the Tenant is or expects to be absent from the Premises for … days or more. |
Surrendering the Tenancy

(19) To give the Association at least one calendar month’s notice in writing if the Tenant wishes to surrender the Tenancy before the end of the fixed term, which surrender shall not be of effect to end the Tenancy until such time as it may be explicitly accepted in writing by the Association.

Moving out

(20) To give the Association vacant possession and return the keys of the Premises at the end of the Tenancy and to leave the Premises and the Association’s fixtures and fittings in good lettable condition and repair. This includes the removal all furniture, personal possessions and rubbish; the Tenant is warned that if personal belongings are left behind the Landlord may pursue legal remedies for civil trespass as well as breach of Tenancy.

THE TENANT’S RIGHTS

4. The Tenant has the following rights:-

Right to occupy

(1) The Tenant has the right to occupy the Premises without interruption or interference from the Association for the duration of this Tenancy (except for the obligation contained in this Agreement to give access to the Association’s employees or contractors).

Tenure

(2) During the term of the Tenancy the Tenant shall remain an assured shorthold tenant so long as he or she occupies the Premises as his or her only or principal home.

Right to take in lodgers

(3) Subject to clauses 3(15), 3(16) and 3(17) above, the Tenant may take in any persons as lodgers provided that the Tenant may not grant a sub-tenancy.

Right to consultation

(4) The Association shall consult the Tenant before making changes in matters of housing management or maintenance that are likely to have a substantial effect on the Tenant.

Right to information

(5) The Tenant has a right to information from the Association about the terms of this Tenancy and about the Association’s repairing obligations, its policies and procedures on tenant consultation, housing allocation and transfers, and its
performance as a landlord.

Data protection (6) The Association will use personal information supplied by the Tenant only for the purpose for which it was supplied; for purposes reasonably pursuant to the operation of the Association as a social landlord; or for purposes specifically sanctioned by data protection legislation (for example, for the prevention or detection of crime).

Right to exchange (7) The Tenant has the right to exchange this Tenancy with that of another assured or secure tenant of a registered housing association or a local authority subject to the prior written consent of the Association, which shall be withheld only on specified grounds. Such an exchange shall be effected either by mutual assignment of the Tenancies or by surrender and re-grant of each Tenancy in accordance with the relevant legal and regulatory provisions.

Complaints (8) The Association shall establish a procedure for dealing with complaints raised by the Tenant on any matter arising from this Tenancy. The Association shall provide details of the scheme at the beginning of the Tenancy and inform the Tenant of any changes.

If still dissatisfied after the complaints procedure has been exhausted, the Tenant has the right to refer the matter to the Independent Housing Ombudsman.

Right to improve (9) The Tenant may make improvements, alterations and additions to the Premises including the erection of a television aerial, external decoration and additions to or alterations in the Association’s installations, fixtures and fittings, provided that the Tenant has first obtained the written consent of the Association and all other necessary approvals (for example, planning permission or building regulations approval). The Association shall not unreasonably withhold its consent but may make it conditional upon the work’s being carried out to a certain standard. Failure to seek the Association’s consent or to comply with the Association’s conditions shall be a breach of the Tenant’s obligations under this Tenancy.

Compensation for (10) The Association shall establish a scheme under
improvements which the Tenant may be compensated for the costs of specified improvements. The Association shall provide details of the scheme at the beginning of the Tenancy and inform the Tenant of any changes.

Right to repair (11) The Association shall establish a scheme providing the Tenant with a remedy if the Association fails to carry out its obligations to repair. The Association shall provide details of the scheme at the beginning of the Tenancy and inform the Tenant of any changes.

EXECUTED AS A DEED by [ ] (name of organisation) acting by

Authorised signatory: ................................. (sign)
.................................................... (print name & position)

Authorised signatory: ................................. (sign)
.................................................... (print name & position)

(OR, where affixing common seal)

EXECUTED AS A DEED by affixing the common seal of [ ] (name of organisation) in the presence of:

Authorised signatory: ................................. (sign)
.................................................... (print name & position)

Authorised signatory: ................................. (sign)
.................................................... (print name & position)

EXECUTED AS A DEED BY [ ] (name of tenant)

................................. (signature of tenant)

In the presence of: ................................. (signature of witness)

.................................................... (name, address and occupation of witness)

(repeat above execution clause if joint tenants)
Federation Briefing: Assured Shorthold Fixed-Term Tenancies

Introduction

The revised Tenancy Standard and new investment framework envisage that, commencing in April 2011, social landlords will in some circumstances let rented housing on fixed-term tenancies rather than the periodic tenancies (either assured or secure) that have been usual in the past.

For local authority landlords, such a change requires statutory authority and a new regime of ‘flexible secure’ fixed-term tenancies is due to take effect in April 2012. For housing associations, no such legislative provision is necessary because they have always had the power to issue fixed-term tenancies.

However, it has not previously been their practice to do so. Associations may therefore be unfamiliar with the distinctive features of fixed-term tenancies, which will require significant changes in their tenancy management processes. In particular:

- some grounds for possession are not available against fixed-term tenants
- the familiar ‘section 13’ rent increase procedure does not apply to fixed-term tenancies
- a notice to quit is not effective to end a fixed-term tenancy, so special procedures will have to be followed if the tenant wishes to leave before the end of the fixed term, or if the tenant abandons the property
- the grant of tenancy may involve special legal processes, which tend to increase the longer the term.

The difference between a fixed-term tenancy and a periodic tenancy

Associations are likely to be most familiar with a periodic tenancy, which is one that is granted for an initial tenancy period, and then automatically rolls forward from period to period. In social housing, weekly tenancies are the most common but some social landlords prefer monthly tenancies, which are usual in the private sector; and other periods such as fortnightly or quarterly are occasionally encountered. A periodic tenancy will continue until something intervenes to stop it, such as a court order or a valid notice to quit.

A fixed-term tenancy, by contrast, is granted for a single specified period of time at the end of which the tenancy will terminate. This has a number of consequences, some of which are inherent in the nature of a fixed-term tenancy, while others have been created by statute. These differences do not create any insuperable difficulties, but they will need to be taken into account in tenancy management.

It is important to note that tenancies used in the so-called ‘flexible’ regime, although fixed-term rather than periodic, are still assured shorthold tenancies. Much of the familiar regime in the 1988 Housing Act (as amended by the Housing Act 1996) will therefore still apply.
Creating a fixed-term tenancy

The creation of a fixed-term tenancy may involve special processes, depending on the length of the term.

Fixed-term tenancies of three years or less can be created by the entering into of a tenancy agreement and do not require any special process. If, however, the fixed term exceeds three years, the tenancy must be executed as a deed or else it is void. Landlords should take particular care to ensure that the deed is properly executed by both the landlord and the tenant.

If the fixed term is more than seven years, the tenancy must be entered at the Land Registry. This will require the preparation of professionally drawn location maps and floor plans, as well as the payment of Land Registry fees.

Once the term reaches 21 years, it is a “long tenancy” for the purposes of various Leasehold Reform Acts and this introduces a raft of further requirements. It is assumed that in practice no association would grant such a long tenancy in ordinary rented housing.

Implications for relationship with tenants

In many respects the expectations for the conduct and management of the tenancy will be the same as for a traditional full assured tenancy. The tenant will be under similar obligations to pay the rent and other charges, reside at the premises, refrain from causing a nuisance to neighbours or damaging the property, and so on. Likewise, the landlord must keep the property in repair and respect the tenant’s right of quiet enjoyment.

However, the essentially time-limited nature of the relationship will alter the dynamic. No longer is the tenant entitled to assume that he or she has a home for life. The tenancy has been granted on the assumption that the tenant’s need for social housing will be periodically reviewed. The revised tenancy standard requires a formal notice by the landlord, six months before the end of the tenancy, if it is not intended to renew the tenancy when it expires. However, this is very much a minimum requirement: the Federation strongly recommends landlords to engage with fixed-term tenants throughout the term, not just when nearing the end of it, to take stock routinely of any changes in the tenant’s circumstances that are likely to have a bearing on the decision whether to renew the tenancy. This will require tactful handling to ensure that it is seen as a positive process: the focus throughout will be on ensuring that the tenant’s housing needs will continue to be adequately met. If it becomes clear that this can be achieved outside the social housing sector, the landlord should be ready to furnish the tenant with all reasonable advice and assistance: this is a regulatory requirement after the service of the six-months’ notice, but the Federation recommends that this approach should be taken throughout the tenancy.

Rent increases

Section 13 of the Housing Act creates a mechanism for rent increases in assured tenancies, including a statutory form of notice. However, this mechanism is for
periodic tenancies only. The model tenancy therefore stipulates that the landlord may increase the rent once in the first year or the tenancy and annually thereafter, and must provide a month’s written notice to the tenant specifying the new rent. Note that because the statutory mechanism is not available, the statutory form of rent increase notice should not be used. In addition, the tenant has no right of appeal to the Rent Assessment Committee.

**Terminating a tenancy before the end of the fixed term**

There are particular issues about bringing a tenancy to an end before the end of the fixed term. Notably, neither the tenant nor the landlord can serve a valid notice to quit. This section looks at the principal ways of ending the tenancy during the term.

*Surrender*

The tenancy can be ended by an offer of surrender by the tenant and its acceptance by the landlord. Note that unlike notice to quit, which is essentially a unilateral act, surrender is bilateral: it must be offered by the tenant and accepted by the landlord before it takes effect. Provided both parties agree, such a surrender can take effect at any time during the tenancy; the rules about timing of a notice to quit do not apply to a surrender. A tenant wishing to leave during the term should therefore be asked to make a formal offer of surrender, and it would be good practice for the landlord to accept this provided it is satisfied that there are no arrears or other outstanding issues with the tenant. Both the offer and the acceptance should be in writing and in a joint tenancy, the surrender offer should be signed by all the joint tenants.

*Court order*

A fixed-term assured shorthold tenancy can still be ended by a court order if a valid ground for possession is made out. These are the familiar grounds as defined in the Housing Act 1988 for periodic assured tenancies, but several of them are not available for a fixed-term tenancy. Specifically, grounds 1, 3, 4, 5, 6, 7, 9 and 16 do not apply. In other words, all the mandatory grounds are unavailable except ground 2 (sale by mortgagee) and ground 8 (serious rent arrears). All the discretionary grounds are available except ground 9 (suitable alternative accommodation) and ground 16 (tied accommodation). The unavailability of certain grounds is a factor that landlords may wish to take into account in deciding the length of term to be granted in any particular case.

*Ending the tenancy in the case of abandonment*

If the tenant abandons the property, or otherwise fails to use it as his or her only or principal home, possession can be sought by court order in the usual way using ground 12 (other breach of tenancy). Alternatively, the association can formally re-enter (or ‘forfeit’) the tenancy. Such a re-entry must, however, be preceded by the service at the premises of a special notice under s146 of the Law of Property Act 1925. This notice should state the nature of the breach of covenant (i.e. that the tenant is not using the property as his or her only or principal home) and should give the tenant a reasonable time to remedy the
breach (i.e. to move back in). It is suggested that a fortnight might be a reasonable time. If after the specified time the tenant has failed to remedy the breach, the landlord can proceed to forfeit the tenancy by physically re-entering the property (breaking in if necessary). Note that provided the term of the tenancy is less than 21 years, it is not necessary to go to court before issuing the s146 notice; in fact, unless the tenant challenges the notice, re-entry does not involve going to court at all. Forfeiture will therefore be far quicker and cheaper than taking possession action in court; but landlords should be aware that if the premises are still occupied by anyone that was lawfully resident under the tenancy (this would include a member of the tenant’s household, or a lodger, not just the actual tenant), the Protection from Eviction Act will apply and forcible re-entry will be a serious criminal offence. Therefore Associations should not seek to forfeit a tenancy unless they are entirely satisfied that the premises are unoccupied. Forfeiture is not, of course, a suitable remedy for other breaches of tenancy, e.g. rent arrears, where the tenant remains in residence.

It has been argued that the landlord can treat abandonment as an implied offer by the tenant to surrender the tenancy, but the legalities around this are uncertain and the Federation does not recommend this approach.

The end of the fixed term

Not less than six months before the end of the fixed term, the association should serve on the tenant a notice formally stating its intentions. If, as the Federation strongly recommends, the association has been working closely with the tenant throughout the term, the contents of the notice should not come as a surprise to the tenant. If the tenant’s circumstances do not justify a renewal of the tenancy, the association should offer the tenant all reasonable advice and assistance to identify suitable alternative accommodation.

If a fresh tenancy of the premises is to be offered, the acceptance of the new tenancy by the tenant will act as an implied surrender of the old tenancy and no further action is necessary to bring it to an end. If the existing tenancy is held jointly, both (or all) the joint tenants must agree the new tenancy for such an implied surrender to be effective.

Because the tenancy created by this agreement is fixed-term, it will, left to itself, terminate at the end of the term (“through effluxion of time” is the legal expression). However, because the tenancy is assured shorthold, it will then automatically be replaced by a statutory assured shorthold periodic tenancy provided that the tenant remains in residence. To avoid this, the association should serve formal notice, not less than two months before the end of the term, of its intention to seek a court order ending the tenant’s right to occupy. This is the same as the familiar section 21 notice for ending a periodic shorthold tenancy, but with a fixed-term tenancy, the notice can take effect only at the end of the fixed term.

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